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## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

#### 31 CFR Parts 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, and 1028

RIN 1506-AA92

#### Transfer and Reorganization of Bank Secrecy Act Regulations—Technical Amendment.

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Final rule.

**SUMMARY:** FinCEN is issuing this final rule as a technical amendment to new Chapter X of Title 31 of the Code of Federal Regulations, which was published on October 26, 2010. After that date, FinCEN published two final rules in Part 103 of Title 31 of the Code of Federal Regulations, one concerning mutual funds and the other concerning the confidentiality of a report of suspicious activity (SAR). This final rule moves the SAR confidentiality rule from Part 103 to new Chapter X and addresses the compliance date of the mutual fund rule. Additionally, the Chapter X Final Rule contained an inadvertent typographical error that omitted several sections from Subpart C of Part 1026 Rules for Futures Commission Merchants and Introducing Brokers in Commodities. This final rule corrects those omissions.

**DATES:** *Effective Date:* March 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Regulatory Policy and Programs Division, FinCEN (800) 949-2732 and select option 6.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On October 26, 2010, FinCEN issued a final rule (“the Chapter X Final Rule”), creating a new Chapter X in title 31 of the Code of Federal Regulations (CFR) for Bank Secrecy Act (BSA) regulations. As discussed in the Chapter X Final Rule, FinCEN is reorganizing its regulations in new Chapter X to make them more accessible for covered individuals and financial institutions. The reorganization is not intended to have any substantive effect on the BSA regulations. Chapter X will be effective on March 1, 2011.<sup>1</sup>

<sup>1</sup> See 75 FR 65806 (October 26, 2010) (Transfer and Reorganization of Bank Secrecy Act Regulations Final Rule).

On April 14, 2010, FinCEN issued a final rule to include mutual funds within the general definition of “financial institution” in the BSA regulations.<sup>2</sup> On October 15, 2010, FinCEN published a final rule extending the compliance date for those provisions of 31 CFR 103.33 that apply to mutual funds from January 10, 2011 to April 10, 2011; however, this extension of the compliance date has not otherwise amended the applicable regulation.<sup>3</sup> The regulatory changes made by including mutual funds within the general definition of “financial institution” were contained in the Chapter X Final Rule. The extended compliance date for these provisions still applies even though they have moved to 31 CFR Chapter X.

On December 3, 2010, FinCEN issued a final rule to amend the BSA regulations regarding the confidentiality of a report of suspicious activity (“SAR”). To reflect the reorganization of BSA rules in Chapter X, FinCEN is issuing this technical amendment rule to move the revised SAR confidentiality rules, without any change to their applicability date, to Chapter X.

As published, the Chapter X Final Rule contains omissions from Subpart C of Part 1026 Rules for Futures Commission Merchants and Introducing Brokers in Commodities. This final rule corrects those omissions.

##### II. Effective Date

The effective date of this technical amendment to Chapter X will be March 1, 2011. As noted above, this technical amendment does not affect any of the applicability dates of the rules that are being moved to Chapter X by this technical amendment.

##### III. Regulatory Matters

###### A. Executive Order 12866

It has been determined that this rulemaking is not a significant regulatory action for purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

###### B. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), Public Law 104-4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by state, local, and tribal governments, in the

<sup>2</sup> See 75 FR 19241 (April 14, 2010) (Final Rule defining Mutual Funds as Financial Institutions).

<sup>3</sup> See 75 FR 63382.

aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under Section 202 and has concluded that on balance the rule provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

###### C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 602 *et seq.*), FinCEN certifies that this final regulation likely will not have a significant economic impact on a substantial number of small entities. The regulatory changes in this final rule merely restructure and recodify existing regulations and do not alter current regulatory obligations.

###### D. Paperwork Reduction Act

This regulation contains no new information collection requirements subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d) *et seq.*). The information collection requirements for the Bank Secrecy Act, currently codified at 31 CFR Part 103, were previously approved by the Office of Management and Budget under OMB Control numbers 1506-0001 through 1506-0046. Under the Paperwork Reduction Act, an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

#### List of Subjects in 31 CFR Parts 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, and 1028

Administrative practice and procedure, Banks, Banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

#### Authority and Issuance

For the reasons set forth above, 31 CFR Chapter X, published October 26, 2010 (75 FR 65842), is amended as follows:

#### PART 1020—RULE FOR BANKS

■ 1. The authority citation for part 1020 is added to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

- 2. Section 1020.320 is amended by:
  - a. Revising the last sentence of paragraph (d); and
  - b. Revising paragraphs (e) and (f); and
  - c. Adding new paragraph (g), to read as follows:

**§ 1020.320 Reports by banks of suspicious transactions.**

\* \* \* \* \*

(d) \* \* \* A bank shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the bank for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the bank to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the institution complies with the Bank Secrecy Act, upon request.

(e) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by banks—(i) General rule.* No bank, and no director, officer, employee, or agent of any bank, shall disclose a SAR or any information that would reveal the existence of a SAR. Any bank, and any director, officer, employee, or agent of any bank that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of Construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by a bank, or any director, officer, employee, or agent of a bank, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the bank for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that

requires the bank to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the bank complies with the Bank Secrecy Act; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures:

(i) To another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(ii) In connection with certain employment references or termination notices, to the full extent authorized in 31 U.S.C. 5318(g)(2)(B); or

(B) The sharing by a bank, or any director, officer, employee, or agent of the bank, of a SAR, or any information that would reveal the existence of a SAR, within the bank's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, "official duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(f) *Limitation on liability.* A bank, and any director, officer, employee, or agent of any bank, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance.* Banks shall be examined by FinCEN or its delegates for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter. Such failure may also violate provisions of Title 12 of the Code of Federal Regulations.

**PART 1021—RULES FOR CASINOS AND CARD CLUBS**

- 3. The authority citation for part 1021 is added to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

- 4. Section 1021.320 is amended by:
  - a. Revising the last sentence of paragraph (d)
  - b. Revising paragraph (e);
  - c. Redesignating paragraphs (f) and (g) as paragraphs (g) and (h);
  - d. Adding new paragraph (f); and
  - e. Revising newly designated paragraph (g).

**§ 1021.320 Reports by casinos of suspicious transactions.**

\* \* \* \* \*

(d) \* \* \* A casino shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the casino for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the casino to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the casino complies with the Bank Secrecy Act, or any tribal regulatory authority administering a tribal law that requires the casino to comply with the Bank Secrecy Act or otherwise authorizes the tribal regulatory authority to ensure that the casino complies with the Bank Secrecy Act, upon request.

(e) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by casinos—(i) General rule.* No casino, and no director, officer, employee, or agent of any casino, shall disclose a SAR or any information that would reveal the existence of a SAR. Any casino, and any director, officer, employee, or agent of any casino that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of Construction.* Provided that no person involved in any reported

suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by a casino, or any director, officer, employee, or agent of a casino, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the casino for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the casino to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the casino complies with the Bank Secrecy Act, or any tribal regulatory authority administering a tribal law that requires the casino to comply with the Bank Secrecy Act or otherwise authorizes the tribal regulatory authority to ensure that casino complies with the Bank Secrecy Act; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR.

(B) The sharing by a casino, or any director, officer, employee, or agent of the casino, of a SAR, or any information that would reveal the existence of a SAR, within the casino's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act (BSA). For purposes of this section, "official duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(f) *Limitation on liability.* A casino, and any director, officer, employee, or agent of any casino, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or

any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance.* Casinos shall be examined by FinCEN or its delegates for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

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## PART 1022—RULES FOR MONEY SERVICES BUSINESSES

■ 5. The authority citation for part 1022 is added to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

■ 6. Section 1022.320 is amended by:

- a. Revising the last sentence of paragraph (c);
- b. Revising paragraph (d);
- c. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g);
- d. Adding new paragraph (e); and
- e. Revising newly designated paragraph (f), to read as follows:

### § 1022.320 Reports by money services businesses of suspicious transactions.

\* \* \* \* \*

(c) \* \* \* A money services business shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the money services business for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the money services business to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the money services business complies with the Bank Secrecy Act.

(d) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (d). For purposes of this paragraph (d) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by money services businesses—(i) General rule.* No money services business, and no director, officer, employee, or agent of any money services business, shall

disclose a SAR or any information that would reveal the existence of a SAR. Any money services business, and any director, officer, employee, or agent of any money services business that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of Construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (d)(1) shall not be construed as prohibiting:

(A) The disclosure by a money services business, or any director, officer, employee, or agent of a money services business, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the money services business for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the money services business to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the money services business complies with the Bank Secrecy Act; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR.

(B) The sharing by a money services business, or any director, officer, employee, or agent of the money services business, of a SAR, or any information that would reveal the existence of a SAR, within the money services business's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, "official duties" shall not include the disclosure of a SAR, or any information that would

reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(e) *Limitation on liability.* A money services business, and any director, officer, employee, or agent of any money services business, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(f) *Compliance.* Money services businesses shall be examined by FinCEN or its delegates for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

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## PART 1023—RULES FOR BROKERS OR DEALERS IN SECURITIES

■ 7. The authority citation for part 1023 is added to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

■ 8. Section 1023.320 is amended by revising the last sentence in paragraph (d), and by revising paragraphs (e), (f), and (g) to read as follows:

### § 1023.320 Reports by brokers or dealers in securities of suspicious transactions.

\* \* \* \* \*

(d) \* \* \* A broker-dealer shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the broker-dealer for compliance with the Bank Secrecy Act, upon request; or to any SRO that examines the broker-dealer for compliance with the requirements of this section, upon the request of the Securities and Exchange Commission.

(e) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN

pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by brokers or dealers in securities.* (i) *General rule.* No broker-dealer, and no director, officer, employee, or agent of any broker-dealer, shall disclose a SAR or any information that would reveal the existence of a SAR. Any broker-dealer, and any director, officer, employee, or agent of any broker-dealer that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of Construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by a broker-dealer, or any director, officer, employee, or agent of a broker-dealer, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the broker-dealer for compliance with the Bank Secrecy Act; or to any SRO that examines the broker-dealer for compliance with the requirements of this section, upon the request of the Securities Exchange Commission; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures:

(i) To another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(ii) In connection with certain employment references or termination notices, to the full extent authorized in 31 U.S.C. 5318(g)(2)(B); or

(B) The sharing by a broker-dealer, or any director, officer, employee, or agent of the broker-dealer, of a SAR, or any information that would reveal the existence of a SAR, within the broker-dealer's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary

to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, "official duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(3) *Prohibition on disclosures by Self-Regulatory Organizations.* Any self-regulatory organization registered with the Securities and Exchange Commission, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR except as necessary to fulfill self-regulatory duties with the consent of the Securities Exchange Commission, in a manner consistent with Title II of the Bank Secrecy Act. For purposes of this section, "self-regulatory duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding.

(f) *Limitation on liability.* A broker-dealer, and any director, officer, employee, or agent of any broker-dealer, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance.* Broker-dealers shall be examined by FinCEN or its delegates for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

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## PART 1024—RULES FOR MUTUAL FUNDS

■ 9. The authority citation for part 1024 is added to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

■ 10. Section 1024.320 is amended by:

- a. Revising the last sentence of paragraph (c); and
- b. Revising paragraphs (d), (e), and (f), to read as follows:

**§ 1024.320 Reports by mutual funds of suspicious transactions.**

\* \* \* \* \*

(c) \* \* \* The mutual fund shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the mutual fund for compliance with the Bank Secrecy Act, upon request.

(d) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (d). For purposes of this paragraph (d) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by mutual funds—(i) General rule.* No mutual fund, and no director, officer, employee, or agent of any mutual fund, shall disclose a SAR or any information that would reveal the existence of a SAR. Any mutual fund, and any director, officer, employee, or agent of any mutual fund that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (d)(1) shall not be construed as prohibiting:

(A) The disclosure by a mutual fund, or any director, officer, employee, or agent of a mutual fund, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the mutual fund for compliance with the Bank Secrecy Act; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(B) The sharing by a mutual fund, or any director, officer, employee, or agent of the mutual fund, of a SAR, or any

information that would reveal the existence of a SAR, within the mutual fund's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, "official duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(e) *Limitation on liability.* A mutual fund, and any director, officer, employee, or agent of any mutual fund, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(f) *Compliance.* Mutual funds shall be examined by FinCEN or its delegates for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

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**PART 1025—RULES FOR INSURANCE COMPANIES**

- 11. The authority citation for part 1025 is added to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

- 12. Section 1025.320 is amended by:

- a. Revising the last sentence of paragraph (d);
- b. Revising paragraph (e);
- c. Redesignating paragraphs (f) through (h) as paragraphs (g) through (i);
- d. Adding new paragraph (f); and
- e. Revising newly designated paragraph (g), to read as follows:

**§ 1025.320 Reports by insurance companies of suspicious transactions.**

\* \* \* \* \*

(d) \* \* \* An insurance company shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the insurance company for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the insurance company to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the institution complies with the Bank Secrecy Act, upon request.

(e) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by insurance companies—(i) General rule.* No insurance company, and no director, officer, employee, or agent of any insurance company, shall disclose a SAR or any information that would reveal the existence of a SAR. Any insurance company, and any director, officer, employee, or agent of any insurance company that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of Construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by an insurance company, or any director, officer, employee, or agent of an insurance company, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the insurance company for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the insurance company to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the

institution complies with the Bank Secrecy Act; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR.

(B) The sharing by an insurance company, or any director, officer, employee, or agent of the insurance company, of a SAR, or any information that would reveal the existence of a SAR, within the insurance company's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, "official duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(f) *Limitation on liability.* An insurance company, and any director, officer, employee, or agent of any insurance company, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance.* Insurance companies shall be examined by FinCEN or its delegates for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

## PART 1026—RULES FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS IN COMMODITIES

■ 13. The authority citation for part 1026 is added to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

■ 14. Sections 1026.311, 1026.312, 1026.313 and 1026.314 are added to Subpart C to read as follows:

### § 1026.311 Filing obligations.

Refer to § 1010.311 of this Chapter for reports of transactions in currency filing obligations for futures commission merchants and introducing brokers in commodities.

### § 1026.312 Identification required.

Refer to § 1010.312 of this Chapter for identification requirements for reports of transactions in currency filed by futures commission merchants and introducing brokers in commodities.

### § 1026.313 Aggregation.

Refer to § 1010.313 of this Chapter for reports of transactions in currency aggregation requirements for futures commission merchants and introducing brokers in commodities.

### § 1026.314 Structured transactions.

Refer to § 1010.314 of this Chapter for rules regarding structured transactions for futures commission merchants and introducing brokers in commodities.

■ 15. Section 1026.320 is amended by revising the last sentence in paragraph (d), and by revising paragraphs (e), (f), and (g) to read as follows:

### § 1026.320 Reports by futures commission merchants and introducing brokers in commodities of suspicious transactions.

\* \* \* \* \*

(d) \* \* \* An FCM or IB–C shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the FCM or IB–C for compliance with the BSA, upon request; or to any registered futures association or registered entity (as defined in the Commodity Exchange Act, 7 U.S.C. 21 and 7 U.S.C. 1(a)(29)) (collectively, "SRO") that examines the FCM or IB–C for compliance with the requirements of this section, upon the request of the Commodity Futures Trading Commission.

(e) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as

authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by futures commission merchants and introducing brokers in commodities—(i) General rule.* No FCM or IB–C, and no director, officer, employee, or agent of any FCM or IB–C, shall disclose a SAR or any information that would reveal the existence of a SAR. Any FCM or IB–C, and any director, officer, employee, or agent of any FCM or IB–C that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of Construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by an FCM or IB–C, or any director, officer, employee, or agent of an FCM or IB–C, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the FCM or IB–C for compliance with the BSA; or to any SRO that examines the FCM or IB–C for compliance with the requirements of this section, upon the request of the Commodity Futures Trading Commission; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures:

(i) To another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(ii) In connection with certain employment references or termination notices, to the full extent authorized in 31 U.S.C. 5318(g)(2)(B); or

(B) The sharing by an FCM or IB–C, or any director, officer, employee, or agent of the FCM or IB–C, of a SAR, or any information that would reveal the existence of a SAR, within the FCM's or IB–C's corporate organizational structure for purposes consistent with Title II of the BSA as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director,

officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the BSA. For purposes of this section, "official duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(3) *Prohibition on disclosures by Self-Regulatory Organizations.* Any self-regulatory organization registered with or designated by the Commodity Futures Trading Commission, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR except as necessary to fulfill self-regulatory duties upon the request of the Commodity Futures Trading Commission, in a manner consistent with Title II of the BSA. For purposes of this section, "self-regulatory duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding.

(f) *Limitation on liability.* An FCM or IB-C, and any director, officer, employee, or agent of any FCM or IB-C, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance.* FCMs or IB-Cs shall be examined by FinCEN or its delegates for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

\* \* \* \* \*

## PART 1027—RULES FOR DEALERS IN PRECIOUS METALS, PRECIOUS STONES, OR JEWELS

■ 16. The authority citation for part 1027 is added to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

## PART 1028—RULES FOR OPERATORS OF CREDIT CARD SYSTEMS

■ 17. The authority citation for part 1028 is added to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

Dated: February 16, 2011.

**James H. Freis, Jr.,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 2011–4061 Filed 2–24–11; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### 33 CFR Part 334

#### Naval Surface Warfare Center, Upper Machodoc Creek and the Potomac River, Dahlgren, VA; Danger Zone

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Army Corps of Engineers is amending its regulations for the existing danger zone in the vicinity of Naval Surface Warfare Center, Dahlgren, in King George County, Virginia. The amendment changes the description of the hazardous operations in the area, the hours of operation, and expands the boundaries of a portion of the danger zone. The amendment is necessary to protect the public from potentially hazardous conditions which may exist as a result of use of the areas by the United States Navy.

**DATES:** *Effective Date:* March 28, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. David B. Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or by e-mail at [david.b.olson@usace.army.mil](mailto:david.b.olson@usace.army.mil), or Mr. Robert Berg, Corps of Engineers, Norfolk District, Regulatory Branch, at 757–201–7793 or by e-mail at [robert.a.berg@usace.army.mil](mailto:robert.a.berg@usace.army.mil).

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the danger zone regulations at 33 CFR 334.230 to: Expand the description of continuing hazardous operations in the danger zone to include firing of large or small caliber guns and

projectiles, aerial bombing, directed energy technology, and manned or unmanned water craft operations; expand the Middle Danger Zone farther into Upper Machodoc Creek where operations involving directed energy, watercraft maneuvers and transportation of explosives are conducted; add a 100-yard buffer to prevent public contact with unexploded ordnance along the shoreline of the Naval Facility within the Middle Danger Zone; and extend normal hours of operation of hazardous operations from 4 p.m. to 5 p.m. The danger zone represents a public safety buffer beyond the physical boundaries of the test range to further reduce the safety threat to the boating public.

The proposed rule was published in the November 10, 2010, issue of the **Federal Register** (75 FR 69033) with the docket number COE–2010–0038 and no comments were received.

#### Procedural Requirements

##### a. Review Under Executive Order 12866

This final rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

##### b. Review Under the Regulatory Flexibility Act

This final rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The economic impact of the amendment to this danger zone does not have an effect on the public, does not result in a navigational hazard, or interfere with existing waterway traffic. Therefore, this final rule does not have a significant economic impact on small entities.

##### c. Review Under the National Environmental Policy Act

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps determined the amendment does not have a significant impact on the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment was prepared after the public notice period closed. The environmental assessment may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.